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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN TORRES,

Defendant and Appellant.

B209944

(Los Angeles County
Super. Ct. No. NA074237)

THE COURT:*

Juan Torres appeals from the judgment entered on August 4, 2008, following the trial court's finding that appellant was in violation of probation after a contested hearing. The trial court sentenced appellant to the three-year prison term that had been previously imposed and suspended.

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an "Opening Brief" containing an acknowledgment that she had been unable to find any arguable issues. On December 5, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

* BOREN, P. J., DOI TODD, J., CHAVEZ, J.

On June 18, 2007, after a preliminary hearing, appellant pleaded no contest to indecent exposure in public (Pen. Code, § 314, subd. 1) with a prior violation of Penal Code section 314. The trial court refused to reduce the offense to a misdemeanor because appellant had three prior convictions for violations of section 314. The trial court imposed a prison sentence of three years (the high term), suspended execution of sentence, and placed appellant on formal felony probation under terms and conditions of probation.

On August 4, 2008, a probation violation hearing was held in appellant's case. The probation officer supervising appellant testified that appellant had enrolled in the Caltrans program but never participated. He had enrolled in psychological counseling but never returned for classes. He had never participated in his required drunk-driving program either, although he had enrolled. He had not made his required payments to probation since February 2008.

Dawn Contreras, a deputy probation officer, participated in a probation search of appellant's apartment on May 8, 2008. A substance shown to be marijuana was found in the bathroom.

Appellant testified that he did not participate in the Caltrans program because he suffered from gout. He did not go to counseling or the drunk-driving program because he did not have the money. He said he made his probation payments up to the month before he was last arrested. The marijuana was left behind by a friend to help him eat when his gout medicine upset his stomach, and he also tried it to aid in sleeping. He acknowledged that he had not brought to court any documents showing that he suffered from gout. He had never told his probation officer about his gout, and he had never told her that he could not do the counseling or the drunk-driving program. He said that he had been awaiting money from a tax return, but had never received it. His father, sister, and brother, who were in the courtroom, were now willing to help him.

Defense counsel argued that appellant's family was willing to support him and asked that appellant be allowed to successfully complete probation. The trial court observed that appellant was on probation for approximately a year and had "basically

accomplished nothing.” He had not bothered to go to his probation officer or the court and explain his problems until he was arrested. The trial court stated it was particularly concerned about the failure to attend the psychological sessions and the Caltrans program and found appellant in violation of probation. The trial court revoked and terminated probation and executed the three-year sentence.

“Sentencing choices such as the one at issue here, whether to reinstate probation or sentence a defendant to prison, are reviewed for abuse of discretion. ‘A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner.’ [Citation.] A court abuses its discretion ‘whenever the court exceeds the bounds of reason, all of the circumstances being considered.’ [Citation.] We will not interfere with the trial court’s exercise of discretion ‘when it has considered all facts bearing on the offense and the defendant to be sentenced.’ Citation.]” (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.)

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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